

MINUTES
OF
THE UTAH RADIATION CONTROL BOARD

October 14, 2008

Department of Environmental Quality, DEQ Building #2

Conference Room 101

168 N 1950 W

Salt Lake City, Utah 84114-4850

BOARD MEMBERS PRESENT

Peter A. Jenkins, M.S., CHP
Elizabeth Goryunova, M.S., Vice Chair
Dane L. Finerfrock, Executive Secretary
Scott Bird
Patrick D. Cone
Frank D. DeRosso, MSPH, C.I.H.
Christian K. Gardner
Edd C. Johnson
Douglas S. Kimball, DMD
Joseph K. Miner, M.D., MSPH
Richard W. Sprott, DEQ Director
John W. Thomson, M.D.
David A. Tripp, Ph.D.

PUBLIC

Judy Fahys, Salt Lake Tribune
Karen Langley, University of Utah
Romaine Marshall, EnergySolutions
Sean McCandles, EnergySolutions
Treesa Parker, EnergySolutions
Tye Rogers, EnergySolutions
Dan Shrum, EnergySolutions
Jim Sweet, Gamma West Brachytherapy
Christopher Thomas, HEAL-Utah

BOARD MEMBERS ABSENT/EXCUSED

Joette E. Langianese, Commissioner

**DRC STAFF/OTHER DEQ MEMBERS
PRESENT**

Mario Bettolo, DRC Staff
Craig Jones, Section Manager
Christine Keyser, DRC Staff
Yoli Necochea, DRC Staff
Fred Nelson, Attorney General's Office
Sonja Robinson, DRC Staff

GREETINGS/MEETING CALLED TO ORDER

The Utah Radiation Control Board convened in the Department of Environmental Quality (DEQ), Conference Room 101, 168 North 1950 West, DEQ Bldg. 2, Salt Lake City, Utah. Peter A. Jenkins, Chair, called the meeting to order at 3:00 p.m. He welcomed the Board Members and the public. Chairman Jenkins indicated that if the public wished to address any items on the agenda, they should sign the public sign-in sheet. Those desiring to comment would be given an opportunity to address their concerns during the comment period.

I. APPROVAL OF MINUTES (Board Action Item)

a. Approval of Minutes from the August 1, 2008 Board Meeting

Peter A. Jenkins, Chair, asked the Board for corrections to the minutes from August 1, 2008. Scott Bird requested the following correction:

1. Page 3, Item V. a., under subtitle "Radioactive Waste," fifth paragraph which reads: "MOTION SECONDED BY SCOTT BIRD" Change to read: . . . **EDD C. JOHNSON**"

MOTION MADE BY ELIZABETH GORYUNOVA TO APPROVE THE MINUTES AS AMENDED.

MOTION SECONDED BY JOHN W. THOMSON.

MOTION CARRIED AND PASSED UNANIMOUSLY

II. RULES (Board Action Items)

a. Approval for 5-year Renewal: Radiation Control Rules R313-21, "General Licenses"; R313-30, "Therapeutic Radiation Machines"; and R313-38, "Licenses and Radiation Requirements for Well Logging"

Mario Bettolo, DRC Staff, informed the Board on the two action items. The first item he reported would be an approval of the rules to go forward for a five year renewal, as defined in the Utah Administrative Rules. Mr. Bettolo explained Utah statute requires a rule to be renewed every five years. The rules which would require a five year renewal were: R313-21, "General Licenses"; R313-30, "Therapeutic Radiation Machines"; and R313-38, "Licenses and Radiation Safety Requirements for Well Logging."

Mr. Bettolo reported that the Board received copies of the rules in the informational packet. He explained that there were changes to rules R313-21 and R313-38 he would be addressing in the second section of this item. On this item he asked for the Board to approve the Executive Secretary's recommendation to direct staff to file a Five-Year Notice of Review and

Statement of Continuation with the Division of Administrative Rules for rules R313-21, R313-30 and R313-38.

Mr. Bettolo asked the Board if they had any questions.

Questions by the Board:

Edd C. Johnson asked if the changes that were being requested to the rules also, included compatibility with the NRC rules.

Mario Bettolo responded that the rules had issues of compatibility, and the incorporation to give NRC authority to regulate accelerator produced material. Mr. Bettolo explained that he would go over the changes in detail in the second part of this item. But, for this item he would like the Board's approval for the three rules to go forward as they are written and file them for a Five-Year Notice of Review and Statement of Continuation with the Division of Administrative Rules.

MOTION MADE BY EDD C. JOHNSON TO APPROVE RULES R313-21, R313-30 AND R313-38 FOR A FIVE YEAR NOTICE OF REVIEW AND CONTINUATION WITH THE DIVISION OF ADMINISTRATIVE RULES.

SECONDED BY RICHARD W. SPROTT

MOTION CARRIED AND PASSED UNIAMOUSLY

b. Approval for 30-Day Public Comment Period Proposed Changes to Rules R313-21, "General Licenses"; R313-30, "Therapeutic Radiation Machines"; and R313-38, "Licenses and Radiation Requirements for Well Logging"

Mario Bettolo informed the Board on this action item. Mr. Bettolo explained that this is what Board Member Edd C. Johnson wanted to know when he asked if there was a compatibility issue with the NRC's rules.

Mr. Bettolo explained to the Board that when the staff reviewed the rules for the five year continuation they had noted that there were some compatibility issues with the NRC's rules that needed to be changed. He said, but before he addressed the issues there was an error on the Final Agenda of this item. He reported that there were actually no changes that were being proposed for rule R313-30, "Therapeutic Radiation Machines." He would only be addressing changes to rules: R313- 21 and R313-38.

The following are the changes that were proposed for the two rules:

- (1) Substantive changes to R313-21 involve compatibility with the regulation of accelerator produced material by the NRC. Previously, the State regulated this material, but now NRC has

taken over the regulation of this material. The State has involved compatibility with the regulation by the NRC to include “radium – 226.”

- (2) The change to R313-38 involves updating the incorporation by reference of 10 CFR 39 from the 2001 version to the 2008 version.

Mr. Bettolo asked the Board’s approval to accept the Executive Secretary’s recommendation to direct staff and send the rules out for a 30-day public comment period. He explained that when changes are made to a rule a public comment period is necessary. Mr. Bettolo asked the Board if they had any questions.

Questions by the Board:

Edd C. Johnson asked Mr. Bettolo as of when had NRC decided to start controlling radium – 226.

Mario Bettolo responded it had been decided through the Atomic Energy Act of 2005, which gave the authority to NRC to regulate accelerator produced radioactive material like radium- 226.

MOTION MADE BY ELIZABETH GORYUNOVA TO ACCEPT THE RECOMMENDED CHANGES FOR RULES R313-21 AND R313-38 AND TO SEND THEM OUT FOR A 30-DAY PUBLIC PERIOD COMMENT

SECONDED BY JOSEPH K. MINER

MOTION CARRIED AND PASSED UNIAMOUSLY

III. RADIOACTIVE MATERIALS LICENSING/INSPECTION

No Items

V. RADIOACTIVE WASTE (Board Information Items)

- a. Update: Cedar Mountain Environmental, Inc. (CME) Appeal of EnergySolutions License Renewal**

Peter Jenkins, Chair, informed the Board that Fred Nelson from the Attorney General’s Office would be updating the Board on the appeal.

Fred Nelson, Attorney, informed the Board that he would be reporting on two items. The first item he would describe and explain in detail for the benefit of the new Members on the Board and go over the current issues. He explained that when EnergySolutions license was renewed by the Executive Secretary that in it was a provision under the Division of Administrative Rules which allows for those parties who believe they have a legal interest to present an appeal of the license renewal. This was submitted by Cedar Mountain Environmental (CME). They appealed the

license renewal and they submitted what is called “a request for agency action”. CME detailed what they believed was deficient in the license renewal. They also presented a petition to intervene to demonstrate that they had in fact had a legal interest in the proceedings. Mr. Nelson explained that one of the first things the Board would be deciding on the appeal, was whether or not CME had demonstrated that they have a legal interest. He explained the issues on the pleadings would be brought up on the agenda for the December, 2008 Board meeting.

Fred Nelson, Attorney, explained that when the request for agency action and a petition to intervene were filed that both sides conducted discovery. And over the period of two months they both interviewed individuals, asked for documents, and exchange documents to prove that a legal interest had been demonstrated. The discovery process has been concluded and ended at the end of the month in September, 2008.

Mr. Nelson reported on the following schedule of the events that should be taking place by the parties involved prior to the Board meeting on December 9, 2008:

- The DRC Board will not be meeting on November 11, 2009.
- CME has revised their schedule and will submit a response to *EnergySolutions* and the Executive Secretary on the request for agency action and the petition to intervene by October 23, 2008
- After this response from *EnergySolutions* and the Executive Secretary, Charles Judd from CME will have until November 17, 2008 to respond.
- *EnergySolutions* and the Executive Secretary will respond to CME by December 1, 2008.
- The Board will be receiving an informational packet from the Attorney General’s Office that they will be reviewing at the December 9, 2008 Board meeting.
- At the December 9, 2008 Board meeting the Board will hear whatever issues have been raised by the pleadings.
- The Board will be making a decision after they hear from all the parties at this meeting

Fred Nelson, Attorney, asked the Board if they had any questions on the process of this meeting or if they had any questions on the timing of this meeting? There were no questions by the Board Members.

b. Update: EnergySolutions License Application to the U.S. Nuclear Regulatory Commission (NRC) To Import Low-Level Radioactive Waste from Italy

Fred Nelson, Attorney, reported to the Board on this item. He asked the Board to recall that EnergySolutions had made a request to NRC for licenses to bring Italian waste to the United States. EnergySolutions requested that they place the residues from the processing of Italian waste at their facility at Clive, Utah. He explained the Board looked at the issues and a subcommittee was formed. The subcommittees made a policy statement and send the letter to the NRC. Mr. Nelson reported the proceeding was ongoing.

Mr. Nelson reported that Governor Huntsman called the Attorney General's Office and requested that they intervene in the proceedings; opposing the granting of the licenses. The Attorney General's Office intervened at the Governor's request and a public hearing was held and public comments were taken. Mr. Nelson reported that a copy of NRC's decision had been distributed to the Board. He explained what the decision did was it "stays the proceeding." In essence this means that NRC will not be taking an action on the licenses requested by EnergySolutions until the issues are resolved in Federal District Court.

Mr. Nelson explained that one of the issues that EnergySolutions had brought up during the proceedings that for a license to be issued they have to demonstrate that they have a place to dispose of waste. The Northwest Compact, of which the State of Utah is a party to has indicated to NRC that they have not given permission to EnergySolutions to dispose of waste from Italy at their Clive facility. That being the case, EnergySolutions filed a lawsuit in Federal District Court challenging the authority of the Northwest Compact for restricting waste from coming to their facility. They asked the Utah Federal District Court to rule that the Northwest Compact does not have jurisdiction over EnergySolutions Clive facility.

Mr. Nelson reported that once again the Governor asked his office, the Attorney General's Office to intervene in the proceedings. He said their office did intervene and presented the State of Utah Governor's position on the case. The Rocky Mountain Compact also intervened in the proceeding. At this point, the plaintiffs in the case are EnergySolutions and the defendants in the case are: the Northwest Interstate Compact, the State of Utah and the Rocky Mountain Compact.

EnergySolutions at the beginning of September 2008 filed a motion for summary judgment on the issue of whether or not the Northwest Compact had jurisdiction over EnergySolutions. On October 21, 2008 the motion was filed and a response to the briefed is due from the Northwest Compact, the State of Utah, and from the Rocky Mountain Compact. Mr. Nelson reported that his office is currently preparing this response and they will give the Board a copy as soon as it is filed. EnergySolutions will have the opportunity to reply to the State of Utah's response and the response of the two Compact's. Then the judge will hold a hearing on that issue and make a ruling. Once that ruling is made depending on the ruling, the NRC will either go forward with the licenses or they will base the decision on the Federal District Court. If the decision is made that the Northwest Compact does have jurisdiction over EnergySolutions facility and they have the control of waste going into their facility; the licenses will not be granted to EnergySolutions.

Mr. Nelson reported that this was the status of the matter and the issues. He could not report when a Federal Judge would be making the decision. He said that the pleadings would be completed by the first part of November or either the middle of November, 2008. Once the judge receives the pleadings it will be up to him as to whether or not he would like to hear the case immediately or when he will issue a decision. Mr. Nelson asked the Board if they had any questions.

Questions by the Board:

Peter Jenkins, Chair asked what the interest or basis was for the Rocky Mountain Compact to intervene?

Fred Nelson responded that The Rocky Mountain Compact has a contract with the Northwest Compact to allow the States' in the Rocky Mountain Compact to dispose of waste at the Washington facility. They are concern about the viability of the Washington facility if a court were to rule that the Compact system does not have jurisdiction over EnergySolutions Clive site. They would like to maintain their ability to take waste to Washington and they are concerned of the viability in the system.

Questions were brought up regarding the Low-Level Waste Policy Act in 1978 and if it was still in effect. The Act stated that each state must belong to a Compact region and waste generated within each region can only go to certain places. Mr. Nelson responded that the Low-Level Waste Act was in place and it was amended in 1985. The Northwest Compact was approved at the same time that the Low-Level Policy Act was amended. He explained that although the systems were in place EnergySolutions was making the legal argument that they are a privately owned facility and they should not be subject to be regulated by the

Compact system.

Mr. Nelson informed the Board that he would be providing a copy of *EnergySolutions'* filing of the motion for summary judgment once they filed it. The Board would have both documents from the Compact and *EnergySolutions* to help define the positions they were taking.

Patrick Cone asked if *EnergySolutions* had been bringing in waste from foreign origins before.

Fred Nelson responded that there was a significant dispute between the Compact and *EnergySolutions* as to whether or not foreign waste had in fact been brought in to the United States. He reported that this was one of the on-going disputes between *EnergySolutions* and the Compact. He explained that if waste had been reprocessed that they still could not consider the waste to be from the United States; even though some action had happened in the United States. He reported waste does not get reclassified as domestic by being reprocessed. He said this was an unresolved issue and the Compact and they have taken a definitive stand that they had not authorized foreign waste to come in to the United States. Whether or not waste had come in, in the past.

VI. URANIUM MILL TAILINGS UPDATE

No Items

VII. OTHER DIVISION ISSUES (Board Information Item)

a. Introduction of Board Member: Dr. Douglas Kimball

Peter Jenkins informed the Board that Dane Finerfrock, Executive Secretary, would be introducing a new Board Member and some new DRC Staff Members.

Dane Finerfrock, Executive Secretary, introduced a new appointed Board Member, Douglas S. Kimball, DMD, a general dentist in Kaysville, Utah who would be representing dentistry on the Board.

Dane Finerfrock introduced Sonja Robinson, a new secretary, who would be helping Yoli with Board matters.

Dane Finerfrock informed the Board that DRC had a new Radon Program Coordinator, Christine Keyser. Mr. Finerfrock informed the Board that Ms. Keyser had an announcement she would be making regarding an upcoming seminar over the web. Mr. Finerfrock invited Christine Keyser to come forward and explain the seminar to the Board..

Christine Keyser introduced herself to the Board and said she was honored to be there to meet each of them. Ms. Keyser said she looked forward to working with the Board. She said she was also excited for her new position as DRC's Radon Program Coordinator. Ms. Keyser reported that she was currently gearing up for the 2009 National Radon Action Month in January, 2009. She said that DRC was in the process of wrapping up the National Radon Poster Contest which all schools in the state had been encouraged to participate during the month of October, 2008.

Ms. Keyser informed the Board that on October 21, 2008, DRC would be participating in the National Radon Action Month Webinar. She explained that John Hultquist, Section Manager, would be presenting "Piloting New Methods to Reach Employees." Ms. Keyser asked the Board to refer to the detailed handout in their supplemental packets and invited the Board to participate in the Webinar.

Questions by the Board:

Joseph K. Miner asked whether the position Ms. Keyser held was a new position or whether she was succeeding someone.

Dane Finerfrock answered that Christine was succeeding someone else.

VIII. PUBLIC COMMENT
No Items

**IX. Discussion on Rescheduling of the November, 2008 Board Meeting,
Cancelled Due to Veteran's Holiday on November 11, 2008
Next Scheduled Board Meeting: December 9, 2008 (Tuesday), DEQ Bldg #2,
Conference Room 101, 168 North 1950 West, Salt Lake City, Utah 3:00 –
5:00 P.M.**

Peter Jenkins, Chairman informed the Board there would not be a November, 2008 Board meeting as mentioned earlier by Fred Nelson. He said after he discussed the schedule with Dane Finerfrock, Executive Secretary and Fred Nelson they had come to an agreement that the next meeting would be held on December 2008.

The next Board Meeting is scheduled on Tuesday, December 9, 2008.

THE BOARD MEETING ADJOURNED AT 3:28 P.M.